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REDACTED – FOR PUBLIC INSPECTION

December 23, 2015

By ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, DC 20554

**Re: Request for Review by IVANS, Inc. of Decision by the Universal Service
Administrator and Petition for Declaratory Ruling, WC Docket No. 06-122**

Dear Ms. Dortch:

IVANS, Inc. (“IVANS”) and ABILITY Network, Inc. (“ABILITY”), pursuant to the provisions of Sections 0.457 and 0.459¹ of the Commission’s Rules governing the submission of confidential materials, as well as the Commission’s *Confidential Information Order*² and in accordance with the Freedom of Information Act,³ hereby submit the attached public, redacted version of the enclosed letter. IVANS has denoted with “[[]]” symbols where Confidential Information has been redacted. IVANS is also supplying the Commission with an unredacted, confidential version of the filing, for which IVANS has requested confidential treatment.

¹ 47 C.F.R. §§ 0.457, 0.459.

² *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, Report and Order, 13 FCC Rcd. 24816 (1998) (“*Confidential Information Order*”).

³ 5 U.S.C. § 552.

Marlene H. Dortch
December 23, 2015
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Please contact me with any questions.

Respectfully Submitted,

A handwritten signature in blue ink, reading "Alfred M. Mamlet", written over a horizontal line.

Alfred M. Mamlet

Christopher Bjornson

*Counsel to the former shareholders of IVANS, Inc.
and ABILITY Network, Inc.*

Enclosures

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**Re: Request for Review by IVANS, Inc. of Decision by the Universal Service
Administrator and Petition for Declaratory Ruling, WC Docket No. 06-122**

Dear Ms. Dortch:

IVANS, Inc. (“IVANS”) and ABILITY Network, Inc. (“ABILITY”)² submit this letter to demonstrate that it over-reported its assessable revenues by more than [[]] even if (1) the double-counting from AT&T’s payments is not eliminated; (2) IVANS were required to file Form 499s back more than five years, to 2005 when it first provided MPLS-based Enhanced Virtual Private Network (“EVPN”) services; and (3) MPLS is assessable. Accordingly, the Commission and USAC should conclude that IVANS has fulfilled its USF contribution obligations through 2012 and close this matter.

I. IVANS OVER-REPORTED ASSESSABLE REVENUES BY MORE THAN [[]], EVEN IF THE DOUBLE-COUNTING IS NOT ELIMINATED

IVANS provided information technology solutions to the healthcare industry prior to its acquisition by ABILITY in 2013. During the acquisition process, IVANS became aware that it might have a USF contribution obligation for services it resold from AT&T. IVANS immediately reached out to AT&T and launched a comprehensive review. AT&T told IVANS that it had paid USF on revenues received from IVANS for services subject to USF, but had

¹ The confidential portions of this filing are noted in square brackets. A redacted version for public inspection is also being filed in the Commission’s Electronic Comment Filing System.

² IVANS was acquired by ABILITY and then merged into ABILITY in a transaction that closed on May 1, 2013. ABILITY now stands in the shoes of IVANS. This pleading is being filed on behalf of the former shareholders of IVANS and ABILITY. The IVANS name is used throughout this pleading for consistency.

erroneously not billed IVANS or requested a reseller certificate. AT&T then began billing IVANS for USF on MPLS services on October 19, 2012.³ IVANS paid all USF charges assessed by AT&T.

IVANS filed Form 499s for the five year period, 2008-12. Since IVANS was reselling AT&T's MPLS service, IVANS attempted to follow AT&T's methodology in determining which services were assessable.⁴ As IVANS only had its bills from AT&T and did not have detailed information on AT&T's methodology at that time, IVANS intentionally took very conservative positions in determining its USF contributions base (*i.e.* concluding that revenue was subject to USF where it was not clear), planning to close the acquisition and put the USF issues behind it.⁵

On April 16, 2013, IVANS filed its Form 499-As.⁶ On June 7, 2013, USAC rejected the Form 499-A filings because (1) they did not go back more than five years; and (2) IVANS had deducted from its assessable revenues those revenues that it believed AT&T had already included in its USF contribution base.⁷ Despite rejecting the filings, USAC issued invoices for [[] to IVANS based on the filings, which were promptly paid.

On August 6, 2013, IVANS filed a Request for Review and Petition for Declaratory Ruling of USAC's determination, challenging USAC's position that (1) IVANS needed to file Form 499-As for more than 5 years; (2) the FCC's *Wholesaler-Reseller Clarification Order's* prohibition on double-counting did not apply;⁸ and (3) MPLS was assessable.⁹

³ Declaration of Jeff Dobish, WCB Docket No. 06-122 (Aug. 6, 2013) ("Dobish Declaration") (Attachment 2 to IVANS Inc., Request for Review of Decision of the Universal Service Administrator and Petition for Declaratory Ruling, WCB Docket No. 06-122 (Aug. 6, 2013) ("Request for Review")).

⁴ Declaration of Joseph Fry, WCB Docket No. 06-122 ¶ 4 (Dec. 23, 2015) ("Fry Declaration") (Attachment 1).

⁵ *Id.*

⁶ Letter from Alfred Mamlet, Counsel for IVANS, Inc., to David Capozzi, USAC (Apr. 16, 2013).

⁷ Letter from Kristin Berkland, USAC, to Alfred Mamlet, Counsel for IVANS, Inc. (June 7, 2013).

⁸ Universal Service Contribution Methodology, *Order*, 27 FCC Rcd 13780 (2012) ("*Wholesaler-Reseller Contribution Order*"). The *Wholesaler-Reseller Contribution Order* determined that USAC cannot "double collect if clear and convincing evidence shows that another provider actually contributed on the subject revenues." *Id.* at 13799. Even the *ATS Order*, upon which USAC relies, notes that only one contribution is due for any particular revenue. See Federal-State Joint Board on Universal Service, 22 FCC Rcd 5009, 5013 (2007) ("*ATS Order*").

⁹ Request for Review at 2-4.

In comments filed supporting IVANS' Request for Review, AT&T offered to review and analyze the revenue figures supplied by IVANS and confirm the amounts of assessable revenues from IVANS and the associated USF contributions made by AT&T.¹⁰ In May 2015, AT&T again confirmed that it had included revenues from IVANS on all assessable services in its USF contribution base and certified to the amounts.¹¹ In advance of making that filing, [[

]].¹²

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Table 1 shows:

- Column 1 - the amounts of assessable revenues IVANS initially filed on the Form 499s for 2008-12 applying a conservative methodology, taken directly from Form 499s Line 406, filed by IVANS in April 2013;¹³
- Column 2 - IVANS "gross assessable revenues," [[
]]¹⁴
- Column 3 - the [[
]]¹⁵

¹⁰ AT&T Comments at 3-4.

¹¹ See Letter from Cathy Carpino, AT&T Services, Inc., to Marlene Dortch, WC Docket No. 06-122 (May 1, 2015).

¹² Fry Declaration ¶ 12.

¹³ *Id.* ¶¶ 7-9.

¹⁴ *Id.* ¶¶ 13-17.

¹⁵ *Id.* ¶ 19.

- Column 4 – [[

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As explained in Mr. Fry's declaration, [[

]]¹⁶

Second, [[

]]¹⁸

As Table 1 demonstrates, [[

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II. IVANS HAD NEGLIGIBLE ASSESSABLE REVENUES PRIOR TO 2008

As IVANS explained in its Request for Review, it was obligated to file Form 499s for only five years.¹⁹ This position was strongly supported by commenters.²⁰

Significantly, even if IVANS were required to file Form 499s before 2008, its assessable revenues in most years were below the *de minimis* threshold, and in one year barely exceeded that amount.

¹⁶ *Id.* ¶ 14.

¹⁷ *Id.* ¶¶ 15-17.

¹⁸ *Id.* ¶ 19.

¹⁹ Request for Review at 19-24.

²⁰ AT&T Comments at 4; Ad Hoc Coalition Comments at 4-7; Joint Reply Comments of Verizon and Verizon Wireless, Orange Business Services, BT Americas Inc., BCE Nexxia Corporation and XO Communications at 3-5.

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While comprehensive records prior to 2008 are no longer available, IVANS has searched its archives and found revenue figures from 2005, when it first began providing the MPLS-based EVPN services.²² [[

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* * *

IVANS over-reported its assessable revenues by more than [[]]] even if (1) the double-counting from AT&T's payments is not eliminated; (2) IVANS were required to file Form 499s back more than five years, to 2005 when it first provided EVPN services; and (3) MPLS is assessable. Accordingly, the Commission and USAC should conclude that IVANS has fulfilled its USF contribution obligations through 2012 and close this matter.

Respectfully Submitted,

/s/

Alfred M. Mamlet
Christopher Bjornson
*Counsel to the former shareholders of IVANS, Inc.
and ABILITY Network, Inc.*

cc: Chin Yoo
Steven Augustino

²¹ This amount is estimated by applying AT&T's historical ratios to the gross assessable revenues. Fry Declaration ¶ 19.

²² *Id.* ¶¶ 18, 20.

ATTACHMENT 1

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DECLARATION OF JOSEPH FRY

I, Joseph Fry, being over 18 years of age, swear and affirm as follows:

1. I make this declaration in support of the Request for Review by IVANS, Inc. (“IVANS”) and ABILITY Network, Inc. (“ABILITY”) of a Decision of the Universal Service Administrator and the Petition for Declaratory Ruling on the Assessability of Certain Information Services.

2. Prior to May 1, 2013, when ABILITY completed its acquisition of IVANS, Inc., I was the Vice President of Finance for IVANS. While at IVANS, I was responsible for, among other things, billing, collections, payments, and recordkeeping. I coordinated the review of our records for the preparation of IVANS’ Form 499 filings for submission to the Universal Service Administrative Company (“USAC”). I worked closely with Jeff Dobish, the former President, Shared Services, Chief Financial Officer, and Treasurer for IVANS, so that he could certify the accuracy of the Form 499 filings. I have been retained by Shareholder Services to assist the former shareholders of IVANS in this proceeding, provide background on how we prepared the 499 filings, and analyze the IVANS filings based on additional information provided by AT&T. This declaration provides an explanation of the calculation of actual Universal Service Fund (“USF”) assessable revenue figures for IVANS after further discussions with AT&T.

I. THE INITIAL IVANS’ USF FILING

3. Prior to October 2012, IVANS did not understand that it could have an obligation to contribute to USF. During the due diligence period of its transaction with ABILITY, IVANS came to understand it might have a contribution requirement when it made an inquiry to AT&T. AT&T indicated that the access portions its MPLS-based Enhanced Virtual Private Network (“EVPN”) products were assessable; that AT&T had been paying on all of the underlying

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revenues it received from IVANS; that it had not been passing through the USF charges due to a mistake in its classification on the IVANS' account; and that it would begin passing those charges through for the October 2012 billing cycle.

4. Based on this response from AT&T, IVANS determined that it should follow AT&T's methodology, make conservative assumptions whenever there was doubt about what was assessable, and file FCC Form 499s to put the USF issue behind us and close the transaction. We viewed the AT&T methodology as the "Gold Standard" for USF compliance given AT&T's market-leading position, role as supplier to IVANS and its long history and experience in dealing with these universal service issues.

5. Our initial step was to determine which of the EVPN products were for access. We determined the following products were for access: [[

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6. Using the billing identification numbers, we then analyzed IVANS' database records for each customer on a product-by-product basis for five years (2008-12), labeling every charge

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as either USF assessable or not. We then subtracted what we paid AT&T for these products from our gross revenues for these products to derive our assessable revenues.

7. [[

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8. We decided to use a conservative approach to calculate assessable revenues for IVANS. [[

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9. We used this conservative approach despite the fact that [[

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10. Consequently, we included all of the revenues for these EVPN products and their MDNS counterparts in the assessable category rather than the [[

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11. Unfortunately, AT&T was not able to provide the historical data in the time available for IVANS to make the Form 499 filings. For that reason, we were unable to confirm the data with AT&T before the filings were made.

II. THE REVISED ASSESSABLE REVENUE FIGURES FOR IVANS

12. After we filed the Form 499s, USAC determined that we should have paid USF on revenues that AT&T had already paid on. ABILITY filed a Request for Review of that decision. During the comment period, AT&T agreed to consider our Form 499 data and certify the revenues that it had already paid on. Specifically, AT&T indicated it would review the revenue figures supplied by IVANS and confirm or correct the amounts IVANS stated were the revenues that AT&T reported in its contribution base. [[

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13. [[

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A. MDNS Assessability

14. The first and most significant variation from the IVANS filing is based on the categorization of MDNS as assessable. As Mr. Dobish explained in his August 2013 declaration, the Frame Relay-based MDNS access components were not sold separately—only as part of a bundled solution that included provision of routers, security and network software, protocol processing, and applications. When we made the filing, we nonetheless believed that AT&T had classified the service as assessable. [[

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B. EVPN Assessability

15. [[

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16. [[

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17. [[

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18. In addition to the years 2008-12, we were able to recover revenue and cost reports for the IVANS' EVPN products from its start in the second quarter of 2005. [[

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C. Revised Totals

19. Exhibit A provides [[

]] The

following table provides [[

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[[

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21. In addition, we were able to recover revenue and cost reports from 2005, when IVANS began providing the MPLS-based EVPN services. [[

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[[

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¹ [[

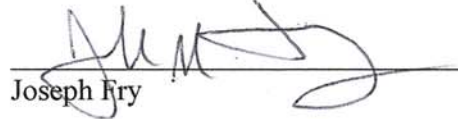
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² [[

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The foregoing declaration has been prepared using facts of which I have personal knowledge or belief or upon information provided to me. I declare under penalty of perjury that the foregoing is true and correct to the best of my information, knowledge, and belief.


Joseph Fry

December ^{KP}23, 2015

EXHIBIT A

Redacted in its entirety